

RUMSON ZONING BOARD OF ADJUSTMENT
APRIL 21, 2015
MINUTES

Chairman Brodsky called the regular meeting to order at 7:30 p.m. with the Pledge of Allegiance. The Roll was called with the following members present: Brodsky, Wood, Cottrell, Seaman, Thompson, Torcivia, Duddy, Blum. Also present: Bernard Reilly (Board Attorney), Fred Andre, (Zoning Officer), State Shorthand.

The requirements of the Open Public Meetings Act were stated as met.

Thomas & Anne Schafer, 7 Linden Lane

Kevin Kennedy, attorney, appeared on behalf of the applicants. He explained that the property is a conforming lot, and they are looking to demolish an outdated home and construct a new home in compliance with all bulk requirements. The property is located on a private right-of-way, which requires approval by this Board.

Mr. & Mrs. Schafer were sworn in at this time. Mr. Schafer stated that they have owned the property since 10/31/14. There is a single-family home currently on the property – 2,800 sq. ft. in size, with three bedrooms and three baths. They do not currently live on the site. The house does not meet the needs of a modern family, in his opinion. It has a small kitchen, and the bedrooms are small with low ceilings. The baths are also outdated. There is not much of a basement. Photos of the property (A-1 – A-4) were shown to the board and described by Mr. Schafer, who took them this past Friday. Other photos show the interior rooms, with Mr. Schafer noting their small sizes. They have been renting the home recently, and several mechanical problems were reported by the tenants.

They are proposing a new, single-family home, as opposed to a renovation, as the one-story structure would not support a second floor, which they feel they need. Their new home will have 4,900 sq. ft. with four bedrooms and 3 ½ baths. Their plan will have little impact on the existing trees, and they will only need to remove one tree. All other trees on the property will remain.

Michael Unger, architect, was sworn in and further described the plans for the new home. He said the home is modest in size, and a rendering of the house was presented (A-5). Mr. Unger thinks the new home fits in with the neighborhood. The siding will be shingled. The only variance is for the location on the private road. There is a pool that is located on the south part of the property, which will comply with the ordinance. A pond on the property will be cleaned up.

There were no comments or questions from the public.

The street is maintained by the neighbors, according to Mr. Unger. They will take care to make sure that the road is not damaged by the construction vehicles.

Chairman Brodsky said that the application seems reasonable, in his opinion. Mr. Cottrell moved to approve the application, and Dr. Wood seconded.

Roll Call Vote: Ayes – Brodsky, Cottrell, Wood, Seaman, Torcivia, Duddy, Thompson, Blum

Nays – None

Motion carried.

Robert & Laurie Keller, 1 Elm Lane

Mr. & Mrs. Keller were sworn in and explained their plan to demolish the existing structure and build a new home. Michael Monroe, architect, was sworn in at this time. He distributed photos taken by him that reflect the condition of the property as it currently exists (A-1). He also provided a survey, showing homes within 200' of the property. They have an existing, nonconforming lot area. They are proposing a 2 ½ story dwelling, conforming in all ways, except for the proposed driveway area (15' width allowed / 35' width proposed). They wanted to position the house as shown, which he feels is correct for the lot. The driveway will be elevated somewhat and not be seen from the street. They will be retaining more water on the property and provide less run off than what currently exists. Elevating the northeast side of the property will allow less water to run off the lot. The house is in keeping with the neighborhood. The retention wells will be on the high side of the lot, and they will be providing a better situation than what currently exists. The wide section of the driveway is about 100' back from the road.

Mr. Duddy asked about building the driveway around the side, but Mr. Monroe said they wanted to hide the garage doors, which occurs with their plan.

Michelle Karagianakis, speaking from the public, was sworn in and asked about the location of the driveway, and Mr. Monroe showed her the location, via their plan. She also asked about the location of this house as compared to the prior house. Mr. Monroe said they aligned the back of the new house with the old house, but will be coming closer to the street – still within the allowed setbacks. Ms. Karagianakis expressed concern about the water issues, noting an existing storm drain that pours water into the stream on her property. She wanted to make sure there are no grading changes that will create flooding problems on her lot. Mr. Monroe said there will be no grading changes to make the problems worse. The net effect is there will be less water running from their property into the pond than what currently exists, and this is a requirement of the borough. He noted dry wells on their property that will catch some of the water, and some water will recharge into the ground. Their engineer is present this evening to testify as to the drainage plan for the property. He also noted that they will be planting more landscaping that will serve to help mitigate the water problems. They do not show a landscape plan at present, but they would be willing to provide this, if required.

There were no other questions or comments from the public. Chairman Brodsky stated he did not see a problem from a zoning perspective.

Mrs. Seaman thinks they have taken care to address the drainage and water issues.

The Board discussed the landscape plan issue, feeling it was not an issue with this application.

Dr. Wood moved to approve the application, and Mr. Cottrell seconded.

Roll Call Vote: Ayes – Brodsky, Cottrell, Wood, Seaman, Torcivia, Duddy, Thompson, Blum
Nays – None

Motion carried.

Raj & Linda Yadav, 8 Laurel Lane

Mr. & Mrs. Yadav were sworn in and explained their plan to put in an in-ground pool at their residence. They have spoken to their neighbors, who all support their application. Mr. Yadav noted that five of the seven homes on their street have pools – all with similar footprints to his property. The pool will be 18' x 36' in size. They feel the proposed location is the best for the lot as to safety issues, and also allows them to keep the current trees and landscaping. They will not be creating any new nonconformities with this proposal. They are not proposing any cabana or pool house. They have an existing tree line and shrubs that will be maintained. No lights are proposed.

There were no questions or comments from the public.

Mr. Thompson moved to approve the application, and Mrs. Seaman seconded.

Roll Call Vote: Ayes – Brodsky, Cottrell, Wood, Seaman, Torcivia, Duddy, Thompson, Blum

Nays – None

Motion carried.

Carly McIlvane, 19 Meadowbrook Ave.

Ms. McIlvane was sworn in, along with her architect, James T. Daly. Ms. McIlvane explained that the property was damaged by Hurricane Irene and again with Super Storm Sandy. They would like to raise the home and add a rear, one-story addition.

Mr. Daly noted that the detached garage was lost in the storm, and they will be replacing the garage under the house. They will be putting a decorative deck and stairs to afford entry to the home. They will also be adding a partial second floor addition. The house will be raised to elevation 13.8'. The garage was a separate structure in the rear before the storm. The elimination of the rear garage will afford less lot coverage than what previously existed. The old driveway will only go to the garage area and not to the back of the house. The old garage was on a cement slab, which will remain without a problem, according to Mr. Andre.

There were no questions or comments from the public.

Mrs. Seaman thinks it will be a vast improvement, and moved to approve the application. Mr. Thompson seconded.

Roll Call Vote: Ayes – Brodsky, Cottrell, Wood, Seaman, Torcivia, Duddy, Thompson, Blum

Nays – None

Motion carried.

John Vibert & Laura Bostwick, 28 Bellevue Ave.

Mark Aikens, attorney, appeared on behalf of the applicants. Steven Krog, landscape architect, was sworn in, and the Board accepted his qualifications. A series of photos were shown to the Board (A1 – A-4):

- A-1 Main trunk of a European Horn Beam tree – 53" in diameter, considered a significant specimen tree, which is at least 100 years old;
- A-2 Canopy of the tree (75' wide);

- A-3 Canopy of the tree;
- A-4 Other mature landscaping on the site.

Peter Zimmerman, architect, was sworn in at this time, and the Board accepted his qualifications. He described the property, and he showed the footprint of the existing house, via their Exhibit A-5. He stated it is not a viable house, and they will be demolishing the home. Their design for the new house has been worked around the Horn Beam tree, providing protection to the tree during construction. He pointed out an existing swimming pool on the south end of the site. The existing motor court sits on a relatively flat portion of the lot. The grade drops off at the front of the existing structure. They have taken the existing building and nonconforming setback and used that as their primary location. The driveway entrance is off Bellevue, which will be maintained, and a second driveway will come from Auldwood. The proposed building area is 88,416 sq. ft., which is 1,000 sq. ft. under that allowed by the ordinance. The building coverage is also 550 sq. ft. under that allowed by the ordinance.

The floor plans were shown, with Mr. Zimmerman showing how their design pulls away from the tree so as not to disturb it. The garages proposed are minimal in size, according to Mr. Zimmerman, with two bays split between a proposed port-o-cocher. The doors face west, away from the road, according to the ordinance. The second floor plan was also shown. The exterior elevations were shown from both Bellevue and Auldwood sides. Mr. Zimmerman noted that due to the extensive vegetation, the house will not be seen from the street. He described the materials for the siding, roof, etc. The height of the building will be 37' to the ridge line.

Chairman Brodsky expressed a concern with the encroachment into the setback, although he understands the reasoning, due to the existing tree. He asked if there could be another solution for the placement of the garage, as he does not see a hardship with this brand new construction. Mr. Zimmerman explained that the family living area needed to be pushed out the one end toward the yard area. Given the limitations to the site, he thinks their proposal is the only location for the garage. Other various suggestions for the change in the location of the garage were discussed, with Mr. Aikens point out the design restraints on the lot due to the tree, causing them to encroach into the setback along Auldwood.

Mr. Duddy also commented that they are starting from a clean slate, and he understands that they want to keep the pool, but he thinks the encroachment into the setback is significant.

Mr. Krog testified on other trees on the property, noting 103 trees on the site. The north property line has a row of Canadian hemlock trees that will remain and provide substantial visual barrier from Auldwood Lane. A tree maintenance service has been utilized over the years. They will be planting trees to replace those that are proposed to be removed by this construction. The trees along Auldwood Lane offer significant screening and will remain in place to the depth of 10' along the north property line. The applicant will work with the borough tree person to assure that this buffer remains.

William Brooks, Borough Forester, was sworn in and confirmed the testimony by Mr. Aikens, noting that they started looking at this last year. He thinks what they are proposing exceeds that required under the ordinance, and he proceeded to describe the existing trees and the trees proposed for removal. He stated that the Horn Beam tree is still in good shape and is very hardy.

He thinks their application gives the tree the best chance for survival. Moving the garage to the west might

compromise the root system of the tree. He mentioned some mitigation techniques to give the tree the best chance for survival.

Mr. Cottrell suggested they consider a two-car garage and eliminate the port-o-cocher, but Mr. Aikens said this would take away from the access from Auldwood.

Jason Fichter, professional engineer and planner, was sworn in, and the Board accepted his qualifications. Mr. Fichter showed the Board an aerial view of the area (A-6), pointing out the lot in question. He listed the existing nonconformities with the property, although the application relates to the existing Horn Beam tree, as shown on A-5. The existing condition includes an existing driveway and motor court from Bellevue Ave., and a patio and pool in the rear of the property, which was constructed in 2007. A new, larger home is proposed in the same location as the existing home, maintaining the driveway from Bellevue and adding a driveway from Auldwood Lane. The hemlocks along Auldwood will not be disturbed by putting in the new driveway. The pool area and rear patio will remain in the same location. The focus was on designing the house with respect to the protection of the Horn Beam tree. The utilities are existing and adequate. Storm water systems do not currently exist, but they will be required to install some new storm water systems. The proposed driveway will be pavers with storage beds underneath, along with some dry wells on the lot.

The three unique constraints are due to the tree, existing pool, and the 20' drop-off on the property. Variances include:

- Minimum lot width (250' required / 215.4' existing;
- Minimum lot frontage (Auldwood - 250' required / 201' existing)
- Lot circle requirement (115' required / 106.8' existing)

There is no opportunity to cure these conditions, and no land is available for this purpose.

- Front yard setback (Auldwood – 100' required / 99' existing /50' proposed)
- Front yard setback (Bellevue – 65' required / 49.3' existing / 49.3' proposed)

Mr. Fichter feels these variances are a hardship, as they have a special situation that creates a practical difficulty on the development of the lot. The tree presents a very unique situation, as does the existing pool and topography. From a planning perspective, if not for the Horn Beam tree, the proposed development would fit in the building envelope. They are also looking to protect the trees in the tree line, which is a large area. He thinks the variances required meet the criteria of a hardship, in his opinion. The house, as designed, would conform, if not for the tree.

Another hardship variance occurs due to the pool, as this accessory structure will temporarily exist after the house is demolished and the new construction occurs. Also, the motor court width exceeds that allowed under the ordinance (15' allowed / 39' proposed). He does not think moving the garage to the west is better, since this is the side of the neighbor. The proposed motor court is smaller than the existing motor court, which would be an improvement.

Negative criteria include the fact that front yard setbacks are mitigated by existing vegetation (as shown on their photo exhibit A-7). There will be little to no visibility of the house if it is constructed as proposed. He believes the placement of the house protects the light, air, and space of the nearby neighbor, and the application does not pose any detriment to the good of the neighborhood.

Exhibit A-8 depicts the façade of the house, showing the building as 37.6% of the total frontage, which is less than what is typical on a conforming lot. Mr. Fichter does not think there is any substantial impairment of the zone plan with this application. He believes that the benefits outweigh any detriments.

Their exhibit A-9 presents a conservation easement that focuses on the row of hemlocks on Auldwood Lane. The applicant would agree to maintain and enhance the landscaping in perpetuity, both on Auldwood Lane and Bellevue Ave., at the discretion of the borough officials.

Chairman Brodsky questioned the hardship as pertains to the drive through, and Mr. Fichter said that they are still under the FAR requirement, and they have presented a house that would comply, except for the tree.

Mr. Krog noted that pushing the garages together and winding the driveway around the structure, as suggested, would affect another existing significant specimen tree (Sweet Gum) in this area.

Chairman Brodsky would like to see some compromise with the front yard nonconforming setback along Auldwood Lane.

Mrs. Seaman agreed and also expressed a problem with the nonconforming setback, which is not the message they want to send. She thinks it is a beautiful house, and she understands the hardship with the tree, but she would like to see a better solution.

Mr. Thompson thinks they have done a great job and understands the issues that impact the site. The perimeter has mature plantings, and you cannot see the house from the street. He does not like the pool, and he thinks there may be some area of compromise available to them.

Mr. Cottrell thinks the property is magnificent and has beautiful landscaping. He agrees with Mr. Thompson, and he likes the port-o-cocher. He is aware of setting a precedent, but he thinks the hardship is pertinent, and he does not like the idea of going to the west side. He would be in favor as it is.

Mr. Duddy likes the design, but he is torn and not convinced that the house needs to be designed as it is and can be changed so as not to encroach on the setback as much. He does not think they did their homework around designing the house on this constrained lot.

Dr. Wood thinks their arguments are strong. He likes the port-o-cocher, which he thinks is a positive feature. He likes the new entry and thinks it all fits.

Mr. Torcivia agrees that it is a beautiful piece of property and design. He thinks their argument is that their placement fits, and he agrees this is a special case. He agrees that the Board does not want to send a message that if an applicant provides enough buffer, you can do whatever you want with the setback. He would like to get the landscape deal, as described by Mr. Aikens.

Mr. Blum said that the lot is beautiful and exceptional. The two setback variances are significant to him. He wonders if they have justified the impact and whether or not there are other alternatives. The south part of the property is way underutilized and may present opportunities for parking, access, etc. He sees the arguments for the variances, but he is not 100% convinced that they have justified the structure in the front yard.

A five-minute recess was taken at this time in order for Mr. Aikens to confer with his clients.

Resolutions

- 1. Randi Yezer, 89 Rumson Road** – Approval to construct covered porch and one-story addition and patio to existing residence. Mr. Thompson moved to adopt the resolution, and Mr. Duddy seconded.

Roll Call Vote: Ayes (Eligible) – Brodsky, Thompson, Duddy, Torcivia

Nays – None

Motion carried.

Approval of Minutes

Mr. Thompson moved to approve the minutes from the March meeting, and Mr. Duddy seconded. Voice Vote: Ayes – unanimous

Bostwick (Continued)

Steven Krog was recalled to identify additional specimen trees on the lot, noting that construction on other areas of the lot would affect these significant specimen trees near the swimming pool.

Mr. Fichter reviewed the topography of the property, noting the existing condition of the lot. He again noted a 10' drop in the area where the Board suggested they could possibly provide the garage and parking. He believes this is a C-1 hardship situation.

Mr. Aikens summed up and reviewed their application:

- Horn Beam tree identified as a champion tree, which he thinks provides sufficient hardship to allow for the nonconformity in the setback;
- Historic wall structure that they will be maintaining;
- Existing landscaping that will be distinguished with a conservation easement on Bellevue Ave. and Auldwood Lane;
- Port-o-cocher protects the light and air of the design and street scape.

He thinks their design is perfect.

Mr. Thompson moved to approve the application, subject to the applicant providing the conservation easement on both Auldwood Lane and Bellevue Ave. Mr. Cottrell seconded.

Roll Call Vote: Ayes – Wood, Thompson, Duddy, Cottrell

Nays – Brodsky, Seaman, Blum

Motion carried.

There being no further business, motion was made and seconded to adjourn. Voice Vote: Ayes, unanimous. The meeting was adjourned at 10:40 p.m.

The next meeting will be **May 19, 2015.**

Respectfully submitted,

Patricia Murphy
Clerk